



NUCLEAR REGULATORY COMMISSION

10 CFR Parts 11, 25, and 95

[NRC-2020-0133]

RIN 3150-AK49

Access Authorization Fees

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its regulations to update the access authorization fees charged to NRC licensees for work performed under the Material Access Authorization Program and the Information Access Authority Program. The change in fees is due to an increase in the review time for each application for access authorization. This final rule is prompted by a recent audit of fees performed by an external certified public accounting and financial management services firm and ensures that the NRC continues to recover the full costs of processing access authorization requests from NRC licensees. The final rule also makes two administrative changes to revise definitions to include new naming conventions for background investigation case types and to specify the electronic process for completing security forms.

DATES: The final rule is effective October 1, 2022.

ADDRESSES: Please refer to Docket ID NRC-2020-0133 when contacting the NRC about the availability of information for this action. You may obtain publicly available

information related to this action by any of the following methods:

- **Federal Rulemaking Website:** Go to <https://www.regulations.gov> and search for Docket ID NRC-2020-0133. Address questions about NRC dockets to Dawn Forder; telephone: 301-415-3407; email: Dawn.Forder@nrc.gov. For technical questions, contact the individuals listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, at 301-415-4737, or by email to PDR.Resource@nrc.gov. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in the SUPPLEMENTARY INFORMATION section.

- **NRC's PDR:** You may examine and purchase copies of public documents by appointment at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to PDR.Resource@nrc.gov or call 1-800-397-4209 or 301-415-4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Emily Robbins, Office of Administration, telephone: 301-415-7000, email: Emily.Robbins@nrc.gov or Vanessa Cox, Office of Nuclear Material Safety and Safeguards, telephone: 301-415-8342, email: Vanessa.Cox@nrc.gov. Both are staff of the U.S. Nuclear Regulatory Commission, Washington DC 20555-0001.

SUPPLEMENTARY INFORMATION:

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I. Background

Certain individuals employed by NRC licensees or their contractors require access to special nuclear material (plutonium, uranium-233, and uranium enriched in the isotopes uranium-233 or uranium-235), restricted data, or national security information. These individuals obtain an access authorization from the NRC. When a licensee requests access authorization for an employee or a contractor, the NRC initiates an investigation of the individual seeking access authorization. Based on the results of that investigation, the NRC determines whether permitting that individual to have access to special nuclear material, restricted data, or national security information would create a security risk.

The Defense Counterintelligence and Security Agency (DCSA) conducts the access authorization background investigations for the NRC and sets the rates charged for these investigations. The combined cost of the DCSA background investigation and related NRC processing activities (NRC processing fee) is recovered from the licensee through an access authorization fee assessed by the NRC. The NRC publishes the fee schedule for special nuclear material access authorization in § 11.15(e) of title 10 of the *Code of Federal Regulations* (10 CFR) and the corresponding fee schedule for restricted data and national security information access authorization in appendix A to 10 CFR

part 25. Both schedules are based on rates charged by DCSA for conducting the access authorization background investigations (DCSA investigation billing rates).

On December 28, 2021 (86 FR 73631), the NRC published in the *Federal Register* a direct final rule that would have amended parts 11, 25, and 95 of 10 CFR to update these access authorization fees charged to NRC licensees for work performed under the Material Access Authorization Program (MAAP) and the Information Access Authority Program (IAAP). The direct final rule also would have made two administrative changes to revise definitions to include new naming conventions for background investigation case types and to specify the electronic process for completing security forms. The direct final rule was to become effective on March 14, 2022.

The NRC concurrently published a companion proposed rule on December 28, 2021 (86 FR 73685). In the proposed rule, the NRC stated that if any significant adverse comments were received, then the NRC would withdraw the direct final rule by publishing a notice in the *Federal Register*. In that event, the direct final rule would not take effect.

The NRC received one comment submission (ADAMS Accession No. ML22025A233) on the proposed rule that accompanied the direct final rule. The comment was submitted by the Nuclear Energy Institute (NEI), a private organization, and is available at www.regulations.gov by searching on Docket ID NRC-2020-0133. The NRC determined the comment to be a significant adverse comment as defined in Section II, Rulemaking Procedure, of the direct final rule because the comment raised an issue serious enough to warrant a substantive response to clarify or complete the record; therefore, the NRC withdrew the direct final rule (87 FR 12853; March 8, 2022).

As stated in the December 28, 2021, proposed rule, the NRC is addressing the comment in this final rule.

II. Discussion

Updated Access Authorization Fees

This final rule amends 10 CFR parts 11, 25, and 95, along with appendix A to 10 CFR part 25. Public Law 115-439, the Nuclear Energy Innovation and Modernization Act (42 U.S.C. 2215), requires the NRC to recover through fees the full cost incurred in providing a service or thing of value. A September 2019 NRC audit of actual in-house costs incurred in processing licensee applications for access authorization showed an increase in the NRC's review time for each application. The audit also showed that the NRC was not recovering its full-cost fees for the time spent processing the increased number of complex applications. Despite a 2016 biennial review indicating increasing costs, the NRC had not adjusted its fees since 2012. Therefore, the NRC is revising the processing fee charged to licensees for work performed under the MAAP and the IAAP from 55.8 percent of the DCSA investigation billing rates to 90.2 percent.

In addition, all requests for reciprocity will be charged a flat fee rate of \$95.00. Previously, the NRC did not charge a fee for reciprocity requests because certain applications from individuals with current Federal access authorizations were processed expeditiously and at a reduced cost. This flat fee will be aligned with the level of effort that has recently been expended by DCSA to process reciprocity requests and accounts for inflation as well as recovery of the appropriate cost for conducting this work. In cases where reciprocity is not acceptable and it is necessary to perform a background investigation, the NRC will charge the appropriate fee based on the DCSA investigation billing rate.

Licensees calculate the NRC access authorization fee for an application by referencing the current DCSA investigation billing rates schedule for background investigation services. Reimbursable billing rates for personnel background investigations are published by DCSA in a Federal Investigations Notice (FIN). The current DCSA investigation billing rates are published on the DCSA website and are available at https://www.dcsa.mil/mc/pv/gov_hr_security/billing_rates/. The NRC's licensees can also obtain the current DCSA investigation billing rates schedule by

contacting the NRC's Personnel Security Branch, Division of Facilities and Security, Office of Administration by email at Licensee_Access_Authorization_Fee.Resource@nrc.gov.

The fee-calculation formula is designed to recover the NRC's actual in-house processing costs for each application received from a licensee. The NRC's access authorization fee is determined using the following formula: the DCSA investigation billing rates on the day the NRC receives the application + the NRC processing fee = the NRC material access authorization fee. The provisions in this final rule set the NRC processing fee; the processing fee is determined by multiplying the DCSA investigation billing rate on the day the NRC receives the application by 90.2 percent (i.e., DCSA rate x 90.2 percent).

As noted previously, the DCSA investigation billing rates are pulled directly from the current DCSA fee schedule for investigations. The tables in revised § 11.15(e)(3) and appendix A to 10 CFR part 25 cross-reference each type of NRC access authorization request to the appropriate investigation service listed in the DCSA's investigation billing rates schedule. For example, a licensee seeking a special nuclear material "NRC-U" access authorization requiring a Tier 5 (T5) investigation is directed by the table in § 11.15(e)(3) to calculate the NRC processing fee based on the DCSA investigation billing rates for a "standard" T5 investigation. According to the current DCSA investigation billing rates schedule (FIN 20-04, "FY 2021 and FY 2022 Investigations Reimbursable Billing Rates," June 30, 2020), the DCSA charges \$5,465 for a "standard" T5 investigation. The table instructs the licensee to calculate the NRC's application processing fee by multiplying \$5,465 by 90.2 percent, which equals \$4,929.43. The licensee then rounds the NRC's processing fee to the nearest dollar, or \$4,929, and adds that amount to the DCSA investigation billing rate of \$5,465 to determine the total NRC access authorization fee: \$10,394.

The following table illustrates the calculation process for access authorization fees requiring a standard T5 investigation:

Current DCSA Investigation Billing Rate for Standard T5	Plus NRC Application Processing Fee			Equals Total NRC Access Authorization Fee for NRC-U Application
	DCSA Rate	x	NRC Fee 90.2% = (rounded to nearest \$)	
\$5,465	\$5,465	x	90.2% = \$ 4,929,43 (rounded to \$4,929)	= \$10,394

Licensees applying for restricted data or national security information access authorization follow a similar procedure. The table in appendix A to 10 CFR part 25 cross-references each type of “Q” or “L” access authorization to the corresponding DCSA investigation type. The DCSA investigation billing rate for the type of investigation referenced is determined by consulting the current DCSA investigation billing rates schedule. This rate is then used in the formula to calculate the correct NRC access authorization fee for the type of application submitted. Copies of the current NRC access authorization fees can be obtained by contacting the NRC’s Personnel Security Branch, Division of Facilities and Security, Office of Administration by email to Licensee_Access_Authorization_Fee.Resource@nrc.gov. Changes to the NRC’s access authorization fees that result from a modification to the DCSA’s billing rate will apply to access authorization requests received on or after the effective date of the modification to the DCSA’s investigation billing rates schedule.

Administrative Changes

In FIN Number 16-02, dated October 6, 2015, and FIN Number 16-07, dated September 26, 2016 (<https://www.dcsa.mil/Portals/91/Documents/pv/GovHRSec/FINs/FY16/fin-16-07.pdf>), the Office of Personnel Management (OPM) implemented the Federal Investigative Standards (FIS) according to the phased Federal Investigative Standards Implementation Plan issued by the Suitability and Security Executive Agents and the Performance Accountability Council. In accordance with the plan, the Access National Agency Check with Inquiries was renamed to Tier 3 (T3) and the National Agency Check

with Law and Credit was renamed to Tier 3 reinvestigation (T3R). The T3 investigation is required for positions designated as non-critical sensitive and/or requiring eligibility for “L” or “R” access or access to Confidential or Secret information. The T3R is the reinvestigation product for the same positions. The Single Scope Background Investigation was renamed to Tier 5 (T5) and the Single Scope Background Investigation-Periodic Reinvestigation was renamed to Tier 5R (T5R). The T5 investigation is required for positions designated as critical sensitive, special sensitive, and/or requiring eligibility for “Q” or “U” access or access to Top Secret or Sensitive Compartmented Information. The T5R is the reinvestigation product required for the same positions. This final rule revises the definitions in 10 CFR parts 11, 25, and 95 to include the new naming conventions for background investigations case types. The definitions for the NRC “R” and NRC “U” special nuclear material access authorizations include the renamed investigation types Tier 3 and Tier 5, respectively. Also, the definitions for NRC “L” and NRC “Q” access authorizations include the renamed investigation types Tier 3 and Tier 5, respectively.

In 2005, the OPM implemented the Electronic Questionnaires for Investigative Processing (e-QIP) system, which allows applicants to electronically enter, update, and release their personal investigative data over a secure Internet connection to an employing agency for review and approval. The eQIP system is a web-based automated system that facilitates the processing of standard investigative forms used when conducting background investigations for Federal security, suitability, fitness, and credentialing purposes. The NRC allows applicants to complete their security form, which is the Standard Form 86 (SF-86), Questionnaire for National Security Positions, electronically through the e-QIP system to minimize errors and expedite processing. This final rule updates 10 CFR parts 11 and 25 to clarify that the NRC uses the e-QIP system for applicants to provide their personal investigative data.

III. Opportunities for Public Participation

On December 28, 2021, the NRC concurrently published in the *Federal Register* a companion rule with a direct final rule to amend the access authorization fees charged to NRC licensees for work performed under the MAAP and the IAAP. The public comment period closed on January 27, 2022.

IV.

Public Comment Analysis

The NRC received one significant adverse comment submission from NEI in response to the companion proposed rule that was concurrently published with the direct final rule; the NRC did not receive any other comment submissions. This section provides the NRC's responses to the comments submitted by NEI.

NEI Comment: The direct final rule lacks transparency because it does not provide sufficient information on the 2019 audit or why the NRC found an increase in fees from 55.8 percent to 90.2 percent necessary and, therefore, it fails to provide a meaningful opportunity for public comment.

NRC Response: In the companion proposed rule, the NRC provided sufficient information to inform the public of the proposed change to the regulations and the agency's reasoning supporting that change. As explained in the direct final rule and companion proposed rule published on December 28, 2021, the NRC conducted a biennial review of fees in 2016. This review of fees for the MAAP and IAAP used a cost analysis technique and methodology based on legislative and regulatory requirements, along with information and costs collected from the NRC's financial management systems. The audit showed that the NRC was not recovering its full-cost fees for the time spent processing the increased number of complex applications. The NEI seeks access to the audit report to confirm the agency's reasoning, but the NRC biennial review of fees reports, and subsequent memoranda, contain Official Use Only – Sensitive Internal Information and, as such, are not publicly available.

The NRC has processes to help ensure the accuracy of its internal financial analyses. Specifically, the NRC retains an independent audit firm to conduct biennial reviews of the fees charged by the NRC's IAAP and MAAP about the processing of IAAP and MAAP applications. The NRC approves the methodology used and evaluates the results of each review.

A September 2019 NRC audit of actual in-house costs incurred in processing licensee applications for access authorization also showed an increase in the NRC's review time for each application. This audit was performed by an external certified public accounting and financial management services firm. The audit also showed that the NRC was not recovering its full-cost fees for the time spent processing the increased number of complex applications; despite a 2016 biennial review indicating increasing costs, the NRC had not adjusted its fees since 2012. The increase in processing fees from 55.8 percent of the DCSA billing rates to 90.2 percent ensures that the NRC continues to recover the full costs of processing access authorization requests from NRC licensees.

No change to the final rule was made as a result of this comment.

NEI Comment: The direct final rule does not adequately explain why NRC processing of background investigation applications has become more complex.

NRC Response: The NRC disagrees with this comment. As discussed in response to the previous comment, the direct final rule and companion proposed rule explained that NRC audits revealed increasing costs for processing access authorizations, which the NRC is required to recover regardless of the reason for the increase. Moreover, the direct final rule and companion proposed rule refer to the FIS that were jointly issued in 2012 by Security and Suitability Executive Agents and the Performance Accountability Council. The FIS are the result of a critical security clearance reform initiative that established new Federal investigative criteria to conduct background investigations. These background investigations are used to determine

eligibility for logical and physical access, suitability for U.S. Government (USG) employment, eligibility for access to classified information or to hold a sensitive position, and fitness to perform work for or on behalf of the USG as a contractor employee.

The revised Federal investigative criteria required expansion of investigative inquiries/sources and developed potentially disqualifying information in a greater percentage of cases, resulting in longer turnaround times and increased efforts by the NRC.

No change to the final rule was made as a result of this comment.

NEI Comment: The proposed implementation schedule is unreasonable.

NRC Response: The NRC is statutorily required to recover most of its budget authority through fees assessed to applicants for an NRC license and to holders of NRC licenses. The NRC is required by law to recover its costs and to provide at least 30-days' notice prior to changing or introducing new fees. Once the NRC was notified through the 2019 audit results that it was not fully recovering the costs for work performed under the MAAP and the IAAP, the NRC developed a plan to implement the rate adjustment. The implementation plan included publishing a direct final rule and a companion proposed rule to notify the licensee community and stakeholders of changes in the access authorization fees. The direct final rule was to become effective on March 14, 2022, 75 days after publication on December 28, 2021.

The NRC has taken this comment into consideration and is making this final rule effective on October 1, 2022, so that the new access authorization fees become effective at the beginning of fiscal year 2023. The beginning of each fiscal year is generally when licensees and stakeholders are notified of any changes in the access authorization fee rates.

NEI Comment: The direct final rule incorrectly states that "despite a 2016 biennial review indicating increasing costs, the NRC had not adjusted its fees since

2012.” For example, as demonstrated in the Q clearance data table, while the NRC’s “markup” rate remained at 55.8 percent, the NRC access authorization fee has been steadily adjusted upward since 2012 due to increases in the DCSA investigation billing rates.

NRC Response: The NRC disagrees with this comment. The upward trend in cost that the commenter noted is due to DCSA adjustments and not the NRC processing fee rate. The NRC processing fee percentage has not been adjusted since 2012 (but the DCSA cost has increased).

No change to the final rule was made as a result of this comment.

V. Section-by-Section Analysis

The following paragraphs describe the specific changes in this final rule.

Section 11.7 Definitions.

This final rule revises the definitions in § 11.7 for *NRC-“R” special nuclear material access authorization* and *NRC-“U” special nuclear material access authorization* to include the new naming conventions for background investigations case types.

Section 11.8 Information collection requirements: OMB approval.

This final rule revises § 11.8 to add a new paragraph (c) to clarify that the information collections for the electronic form “Electronic Questionnaire for Investigations Processing (e-QIP), Standard Form 86 (SF-86) - Questionnaire for National Security Positions” are approved under OMB control number 3206-0005.

Section 11.15 Application for special nuclear material access authorization.

This final rule revises paragraphs (b)(1) and (c)(1)(ii) to specify the electronic form of the SF-86.

This final rule revises paragraph (e)(1) to change the NRC processing fee charged to licensees for work performed under the MAAP from 55.8 percent of the DCSA investigation billing rates to 90.2 percent.

This final rule revises paragraph (e)(3) to 1) change the NRC processing fee charged to licensees for work performed under the MAAP from 55.8 percent of the DCSA investigation billing rates to 90.2 percent, 2) indicate that MAAP requests for reciprocity will be charged at a flat fee rate of \$95.00, and 3) include the new naming conventions for background investigations case types.

This final rule revises paragraph (e)(4) to clarify that certain applications from individuals with current Federal access authorizations may be processed expeditiously and at a reduced cost.

This final rule revises paragraph (f)(1) to include the new naming conventions for background investigations case types.

Section 11.16 Cancellation of request for special nuclear material access authorization.

This final rule revises § 11.16 to include the new naming conventions for background investigations case types.

Section 25.5 Definitions

This final rule revises the definitions for “*L*” access authorization and “*Q*” access authorization to include the new naming conventions for background investigations case types.

Section 25.8 Information collection requirements: OMB approval.

This final rule revises paragraph (c)(2) to clarify that the information collections for the electronic form “Electronic Questionnaire for Investigations Processing (e-QIP),

SF-86 - Questionnaire for National Security Positions” are approved under OMB control number 3206-0005.

Section 25.17 Approval for processing applicants for access authorization.

This final rule revises paragraph (d)(1)(i) to specify the electronic form of the SF-86.

This final rule revises paragraph (f)(1) to change the NRC processing fee charged to licensees for work performed under the IAAP from 55.8 percent of the DCSA investigation billing rates to 90.2 percent.

This final rule revises paragraph (f)(3) to indicate that IAAP requests for reciprocity will be charged a flat fee rate of \$95.00.

Appendix A to 10 CFR Part 25--Fees for NRC Access Authorization.

This final rule revises the table in appendix A to 10 CFR part 25 to include the new naming conventions for background investigations case types and to change the NRC processing fee charged to licensees for work performed under the IAAP from 55.8 percent of the DCSA investigation billing rates to 90.2 percent.

Section 95.5 Definitions

This final rule revises the definitions for *NRC “L” access authorization* and *NRC “Q” access authorization* to include the new naming conventions for background investigations case types.

VI. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this final rule amending 10 CFR parts 11, 25, and 95 does not have a significant economic impact on a substantial number of small entities. This final rule applies to those licensees who use, process, store, transport, or deliver to a carrier for transport,

formula quantities of special nuclear material (as defined in 10 CFR part 73) or generate, receive, safeguard, and store National Security Information or Restricted Data (as defined in 10 CFR part 95). Two licensees, both fuel cycle facilities, are currently required to comply with 10 CFR part 11. Seventy-eight licensees and other organizations, mostly power reactors and fuel cycle facilities, are currently required to comply with 10 CFR part 25. None of these licensees are “small entities” as defined in the Regulatory Flexibility Act or the size standards established by the NRC (§ 2.810). This final rule also applies to contractors of those licensees required to comply with this final rule who use, process, store, transport, or deliver to a carrier for transport, formula quantities of special nuclear material (as defined in 10 CFR part 73) or generate, receive, safeguard, and store National Security Information or Restricted Data (as defined in 10 CFR part 95). Some of these contractors may be “small entities” as defined in the Regulatory Flexibility Act or the NRC’s size standards. However, some of these contractors are reimbursed through the contract for the cost of securing access authorization. There are not a substantial number of unreimbursed “small entity” contractors who apply for access authorization, nor is the NRC aware of any significant impact on these unreimbursed “small entity” contractors.

VII.

Regulatory Analysis

A regulatory analysis has not been prepared for this final rule. The Nuclear Energy Innovation and Modernization Act (42 U.S.C. 2215) requires the NRC to recover through fees the full cost incurred in providing a service or thing of value. This final rule ensures that the NRC recovers the full cost of application processing from licensees submitting access authorization requests, as is required by statute (42 U.S.C. 2214(b)). The formula method for calculating these fees continues to provide an efficient and effective mechanism for updating the NRC access authorization fees in response to changes in the underlying DCSA investigation billing rates schedule for required

personnel background investigations. These amendments will neither impose new safety requirements nor relax existing ones and, therefore, do not call for the sort of safety/cost analysis described in the NRC's regulatory analysis guidelines in NUREG/BR-0058, Revision 4, "Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission," dated September 2004 (ADAMS Accession No. ML042820192).

VIII.

Backfitting and Issue Finality

The NRC has determined that the backfit rule does not apply to this final rule and that a backfit analysis is not required. Collection of fees to recover the NRC's costs is required by statute (42 U.S.C. 2214(b)). Therefore, changes to rules designating the amount to be collected are not subject to the backfitting provisions or issue finality provisions in 10 CFR chapter I.

IX.

Cumulative Effects of Regulation

The NRC did not receive any feedback on the potential for cumulative effects of regulation.

X.

Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111-274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, "Plain Language in Government Writing," published June 10, 1998 (63 FR 31885).

XI. National Environmental Policy Act

The NRC has determined that this final rule is the type of action described in § 51.22(c)(1) that is categorically excluded from environmental review. Therefore, neither an environmental impact statement nor environmental assessment has been prepared for this final rule.

XII. Paperwork Reduction Act Statement

This final rule does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget (OMB), Approval Numbers 3150-0046 and 3150-0062.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

XIII. Congressional Review Act

In accordance with the Congressional Review Act of 1996 (5 U.S.C. 801-808), the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget.

XIV. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104-113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or is otherwise impractical. In this final rule, the NRC will revise the formula for calculating the NRC's access authorization fee charged to licensees for work performed under MAAP and IAAP from 55.8 percent of the DCSA investigation billing rate for an investigation of a given type to 90.2 percent. In addition, MAAP requests for reciprocity will be charged a flat fee rate of \$95.00. This action does not constitute the establishment of a standard that contains generally applicable requirements.

List of Subjects

10 CFR Part 11

Hazardous materials transportation, Investigations, Nuclear energy, Nuclear materials, Penalties, Reporting and recordkeeping requirements, Security measures, Special nuclear material.

10 CFR Part 25

Classified information, Criminal penalties, Investigations, Penalties, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 95

Classified information, Criminal penalties, Penalties, Reporting and recordkeeping requirements, Security measures.

For the reasons set forth in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 11, 25, and 95:

PART 11--CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO OR CONTROL OVER SPECIAL NUCLEAR MATERIAL

1. The authority citation for part 11 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 161, 223 (42 U.S.C. 2201, 2273); Energy Reorganization Act of 1974, sec. 201 (42 U.S.C. 5841); 44 U.S.C. 3504 note. Section 11.15(e) also issued under 31 U.S.C. 9701; 42 U.S.C. 2214.

2. In § 11.7, revise the definitions for *NRC-“R” special nuclear material access authorization* and *NRC-“U” special nuclear material access authorization* to read as follows:

§ 11.7 Definitions.

* * * * *

NRC-“R” special nuclear material access authorization means an administrative determination based upon a Tier 3 background investigation that an individual in the course of employment is eligible to work at a job falling within the criterion of § 11.11(a)(2).

NRC-“U” special nuclear material access authorization means an administrative determination based upon a Tier 5 background investigation that an individual in the course of employment is eligible to work at a job falling within the criterion of § 11.11(a)(1) or § 11.13.

* * * * *

3. In § 11.8, add paragraph (c) to read as follows:

§ 11.8 Information collection requirements: OMB approval.

* * * * *

(c) In § 11.15, the Standard Form 86 (SF-86), “Electronic Questionnaire for Investigations Processing (e-QIP), SF-86 - Questionnaire for National Security Positions,” is approved under control number 3206-0005.

4. In § 11.15, revise paragraphs (b)(1), (c)(1)(ii), (e)(1), (3), and (4), and (f)(1) to read as follows:

§ 11.15 Application for special nuclear material access authorization.

* * * * *

(b) * * *

(1) Electronic Questionnaire for Investigations Processing (e-QIP), SF-86 - Questionnaire for National Security Positions;

* * * * *

(c)(1) * * *

(ii) The Electronic Questionnaire for Investigations Processing (e-QIP), SF-86 - Questionnaire for National Security Positions

* * * * *

(e) * * *

(1) Each application for a special nuclear material access authorization, renewal, or change in level must be accompanied by a remittance, payable to the U.S. Nuclear Regulatory Commission, which is equal to the NRC material access authorization fee. This fee must be determined using the following formula: the DCSA investigation billing rates on the day of NRC receipt of the application + the NRC processing fee = the NRC material access authorization fee. The NRC processing fee is determined by multiplying the DCSA investigation billing rate on the day of NRC receipt of the application by 90.2 percent (i.e., DCSA rate x 90.2 percent).

* * * * *

(3) The NRC's Material Access Authorization Program (MAAP) is considered reimbursable work representing services provided to an organization for which the NRC is entitled payment. The NRC is authorized to receive and retain fees from licensees for services performed. The NRC's Office of the Chief Financial Officer periodically reviews the fees charged for MAAP and makes recommendations on revising those charges to reflect costs incurred by the NRC in providing those services. The reviews are performed using cost analysis techniques to determine the direct and indirect costs. Based on this review, all MAAP requests for reciprocity will be charged a flat fee rate of \$95.00 as referenced in paragraph (e)(4)(i) of this section. This flat fee would be aligned with the level of effort that has recently been expended by DCSA to process reciprocity requests, and accounts for inflation as well as recovery of the appropriate cost for conducting this work. Copies of the current NRC material access authorization fee may be obtained by contacting the NRC's Personnel Security Branch, Division of Facilities and Security, Office of Administration by email to: Licensee_Access_Authorization_Fee.Resource@nrc.gov. Any change in the NRC's access authorization fees will be applicable to each access authorization request received on or after the effective date of the DCSA's most recently published investigation billing rates schedule.

(4) Certain applications from individuals having current Federal access authorizations may be processed expeditiously and at a reduced cost because the Commission, at its discretion, may decide to accept the certification of access authorizations and investigative data from other Federal Government agencies that grant personnel access authorizations.

(i) Applications for reciprocity will be processed at the NRC flat fee rate of \$95 per request as referenced in the following table:

The NRC application fee for an access authorization of type...	NRC fee rate
(A) NRC-R based on certification of comparable investigation ¹	\$95
(B) NRC-U based on certification of comparable investigation ²	\$95

¹ If the NRC determines, based on its review of available data, that a Tier 3 investigation is necessary, the appropriate NRC-R fee will be assessed as shown in paragraph (e)(4)(ii) of this section before the conduct of the investigation.

² If the NRC determines, based on its review of available data, that a Tier 5 investigation is necessary, the appropriate NRC-U fee will be assessed as shown in paragraph (e)(4)(ii) of this section before the conduct of the investigation.

(ii) Applicants shall, in cases where reciprocity is not acceptable and it is necessary to perform a background investigation, be charged the appropriate fee referenced in the following table. Applicants shall calculate the access authorization fee according to the stated formula (i.e., DCSA rate × 90.2 percent).

The NRC application fee for an access authorization of type...	Is the sum of the current DCSA investigation billing rate charged for an investigation of type...	Plus the NRC's processing fee (rounded to the nearest dollar), which is equal to the DCSA investigation billing rate for the type of investigation referenced multiplied by...
(A) NRC-R initial ¹	Tier 3 (T3) (Standard Service)	90.2%
(B) NRC-R renewal ¹	Tier 3 Reinvestigation (T3R) (Standard Service)	90.2%
(C) NRC-U initial	Tier 5 (T5) (Standard Service)	90.2%
(D) NRC-U initial	Tier 5 (T5) (Priority Handling)	90.2%
(E) NRC-U renewal ¹	Tier 5 Reinvestigation (T5R) (Standard Service)	90.2%
(F) NRC-U renewal ¹	Tier 5 Reinvestigation (T5R) (Priority Handling)	90.2%

¹ If the NRC determines, based on its review of available data, that a Tier 5 investigation is necessary, the appropriate NRC-U fee will be assessed before the conduct of the investigation.

(f)(1) Any Federal employee, employee of a contractor of a Federal agency,

licensee, or other person visiting an affected facility for the purpose of conducting official business, who possesses an active NRC or DOE-Q access authorization or an equivalent Federal security clearance granted by another Federal agency ("Top Secret") based on a comparable T5 background investigation may be permitted, in accordance with § 11.11, the same level of unescorted access that an NRC-U special nuclear material access authorization would afford.

* * * * *

§ 11.16 [Amended]

5. In § 11.16, fourth sentence, remove the designation "single scope" and add in its place the designation "Tier 5".

PART 25--ACCESS AUTHORIZATION

6. The authority citation for part 25 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 145, 161, 223, 234 (42 U.S.C. 2165, 2201, 2273, 2282); Energy Reorganization Act of 1974, sec. 201 (42 U.S.C. 5841); 44 U.S.C. 3504 note; E.O. 10865, 25 FR 1583, as amended, 3 CFR, 1959-1963 Comp., p. 398; E.O. 12829, 58 FR 3479, 3 CFR, 1993 Comp., p. 570; E.O. 13526, 75 FR 707, 3 CFR, 2009 Comp., p. 298; E.O. 12968, 60 FR 40245, 3 CFR, 1995 Comp., p. 391.

Section 25.17(f) and Appendix A also issued under 31 U.S.C. 9701; 42 U.S.C. 2214.

7. In § 25.5, revise the definitions for "*L*" *access authorization* and "*Q*" *access authorization* to read as follows:

§ 25.5 Definitions.

* * * * *

"*L*" *access authorization* means an access authorization granted by the Commission that is normally based on a Tier 3 (T3) investigation conducted by the Defense Counterintelligence and Security Agency (DCSA).

* * * * *

“Q” *access authorization* means an access authorization granted by the Commission normally based on a Tier 5 (T5) investigation conducted by the Defense Counterintelligence and Security Agency, the Federal Bureau of Investigation, or other U.S. Government agency that conducts personnel security investigations.

* * * * *

8. In § 25.8, revise paragraph (c)(2) to read as follows:

§ 25.8 Information collection requirements: OMB approval.

* * * * *

(c) * * *

(2) In §§ 25.17(c), 25.21(c), 25.27(b), 25.29, and 25.31, the “Electronic Questionnaire for Investigations Processing (e-QIP), SF-86 - Questionnaire for National Security Positions” is approved under control number 3206-0005.

* * * * *

9. In § 25.17, revise paragraphs (d)(1)(i) and (f)(1), (3), and (4) to read as follows:

§ 25.17 Approval for processing applicants for access authorization.

* * * * *

(d)(1) * * *

(i) Electronic Questionnaire for Investigations Processing (e-QIP), SF-86 Questionnaire for National Security Positions;

* * * * *

(f) * * *

(1) Each application for access authorization, renewal, or change in level must be accompanied by a remittance, payable to the U.S. Nuclear Regulatory Commission, which is equal to the NRC access authorization fee. This fee must be determined using

the following formula: the DCSA investigation billing rates on the day the NRC receives the application + the NRC processing fee = the NRC access authorization fee. The NRC processing fee is determined by multiplying the DCSA investigation billing rate on the day the NRC receives the application by 90.2 percent (i.e., DCSA rate x 90.2 percent).

* * * * *

(3) The NRC's Information Access Authority Program (IAAP) is considered reimbursable work representing services provided to an organization for which the NRC is entitled payment. The NRC is authorized to receive and retain fees from licensees for services performed. The NRC's Office of the Chief Financial Officer periodically reviews the fees charged for IAAP and makes recommendations on revising those charges to reflect costs incurred by the NRC in providing those services. The reviews are performed using cost analysis techniques to determine the direct and indirect costs. Based on this review, the IAAP fees are adjusted to reflect the current cost for the program. IAAP requests for reciprocity will be charged a flat fee rate of \$95.00 as referenced in paragraph (f)(4) of this section. This flat fee is aligned with the level of effort that has been expended by DCSA to process reciprocity requests, and accounts for inflation as well as recovery of the appropriate cost for conducting the investigations. Copies of the current NRC access authorization fee may be obtained by contacting the NRC's Personnel Security Branch, Division of Facilities and Security, Office of Administration by email at: Licensee_Access_Authorization_Fee.Resource@nrc.gov. Any change in the NRC's access authorization fee will be applicable to each access authorization request received on or after the effective date of the DCSA's most recently published investigation billing rates schedule.

(4) Certain applications from individuals having current Federal access authorizations may be processed more expeditiously and at less cost because the Commission, at its discretion, may decide to accept the certification of access authorization and investigative data from other Federal Government agencies that grant personnel access authorizations.

(i) Applications for reciprocity will be processed at the NRC flat fee rate of \$95 per request, as referenced in the following table:

The NRC application fee for an access authorization of type...	NRC fee rate
(A) NRC-L based on certification of comparable investigation ¹	\$95
(B) NRC-Q based on certification of comparable investigation ²	\$95

¹ If the NRC determines, based on its review of available data, that a Tier 3 investigation is necessary, the appropriate NRC-L fee will be assessed as shown in appendix A to this part before the conduct of the investigation.

² If the NRC determines, based on its review of available data, that a Tier 5 investigation is necessary, the appropriate NRC-Q fee will be assessed as shown in appendix A to this part before the conduct of the investigation.

(ii) Applicants shall, in cases where reciprocity is not acceptable and it is necessary to perform a background investigation, be charged the appropriate fee referenced in appendix A to this part. Applicants shall calculate the access authorization fee according to the stated formula (i.e., DCSA rate × 90.2 percent).

10. Revise appendix A to part 25 to read as follows:

Appendix A to Part 25—Fees for NRC Access Authorization

The NRC application fee for an access authorization of type...	Is the sum of the current DCSA investigation billing rate charged for an investigation of type...	Plus the NRC's processing fee (rounded to the nearest dollar), which is equal to the investigation billing rate for the type of investigation referenced multiplied by...
Initial "L" access authorization ¹	Tier 3 (T3) (Standard Service)	90.2%
Reinstatement of "L" access authorization ²	No fee assessed for most applications	
Renewal of "L" access authorization ¹	Tier 3 Reinvestigation (T3R) (Standard Service)	90.2%

Initial "Q" access authorization	Tier 5 (T5) (Standard Service)	90.2%
Initial "Q" access authorization	T5 (Priority Handling)	90.2%
Reinstatement of "Q" access authorization ²	No fee assessed for most applications	
Renewal of "Q" access authorization ¹	Tier 5 Reinvestigation (T5R) (Standard Service)	90.2%
Renewal of "Q" access authorization ¹	Tier 5 Reinvestigation (T5R) (Priority Handling)	90.2%

¹If the NRC determines, based on its review of available data, that a Tier 5 investigation is necessary, the appropriate fee for an Initial "Q" access authorization will be assessed before the conduct of investigation.

²Full fee will only be charged if an investigation is required.

PART 95--FACILITY SECURITY CLEARANCE AND SAFEGUARDING OF NATIONAL SECURITY INFORMATION AND RESTRICTED DATA

11. The authority citation for part 95 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 145, 161, 223, 234 (42 U.S.C. 2165, 2201, 2273, 2282); Energy Reorganization Act of 1974, sec. 201 (42 U.S.C. 5841); 44 U.S.C. 3504 note; E.O. 10865, as amended, 25 FR 1583, 3 CFR, 1959-1963 Comp., p. 398; E.O. 12829, 58 FR 3479, 3 CFR, 1993 Comp., p. 570; E.O. 12968, 60 FR 40245, 3 CFR, 1995 Comp., p. 391; E.O. 13526, 75 FR 707, 3 CFR, 2009 Comp., p. 298.

12. In § 95.5, revise the definitions for *NRC "L" access authorization* and *NRC "Q" access authorization* to read as follows:

§ 95.5 Definitions.

* * * * *

NRC "L" access authorization means an access authorization granted by the Commission that is normally based on a Tier 3 (T3) investigation or a Tier 3 reinvestigation (T3R) conducted by the Defense Counterintelligence and Security Agency.

NRC "Q" access authorization means an access authorization granted by the Commission normally based on a Tier 5 (T5) investigation conducted by the Defense

Counterintelligence and Security Agency, the Federal Bureau of Investigation, or other
U.S. Government agency that conducts personnel security investigations.

* * * * *

Dated: July 15, 2022.

For the Nuclear Regulatory Commission.

Daniel H. Dorman,
Executive Director for Operations.

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